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Supreme Court, U.S.
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No. 92-335

In The

Supreme Court of the United States

October Term, 1992

STATE OF ARKANSAS,

Petitioner,

vs.

LARRY KENNETH BUTLER,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Arkansas

RESPONDENT'S BRIEF IN OPPOSITION

DON LLOYD COOK II
Attorney at Law
21 West Mountain Street
Suite 301
Fayetteville, Arkansas 72701
(501) 682-3650

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENTS 2

ARGUMENT I. 3

This Court should not grant certiorari because the Fourth Amendment (as applied through the Fourteenth Amendment) requires that exigent circumstances be present to justify a warrantless arrest within a residence. Further this case is not appropriate for determination of whether the Fourth Amendment requires that an officer have exigent circumstances in addition to being in hot pursuit of the defendant for the arrest to be lawful in that: 1.) No offense was committed in the officer's presence and; 2.) It is not clear that any hot pursuit was ever commence or whether if commenced it began in the respondent's home after the illegal entry of the officer 3

ARGUMENT II. 12

This Court should not grant certiorari because the exclusionary rule requires the suppression of evidence which had been obtained by exploitation of the primary illegality, which occurred as a result of the decision of the arresting officer to continue, in the respondent's home, an encounter from which the respondent had already peaceably withdrawn, all evidence sought to be suppressed being during the occurrence of the illegal entry 12

CONCLUSION 20

TABLE OF AUTHORITIES

Page

CASES:

Bennett v. Coffman, 178 W.Va. 500, 361 S.E.2d 465 (1987) 7

Butler v. State, 309 Ark. 211, 829 S.W.2d 412 (1992). . *passim*

City of Kirksville v. Guffey, 740 S.W.2d 227 (Mo.Ct.App. 1987), *cert. denied*, 485 U.S. 1035, 108 S.Ct. 1596, 99 L.Ed.2d 910 (1988) 8

City of Seattle v. Altschuler, 53 Wash. App. 317, 766 P.2d 518 (1989) 9

Coolidge v. New Hampshire, 403 U.S. 443, 92 S.Ct. 2022, 29 L.Ed.2d 564 (1971) 15

Gasset v. State, 490 So. 2d 97 (Fla. App. 1986) 7

Illinois v. Krull, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987) 14

In Re Lavoyne M., 221 Cal. App. 3d 154, 270 Cal. Rptr. 394 (4th Dist. 1990) 7

Jeffcoat v. Hinson, 851 F.2d 356 (4th Cir. 1988) 9

Leopard v. State, 542 N.E.2d 1347 (Ind. App. 1989) 7

McCall v. People, 623 P.2d 357 (Colo. 1981) 9

McDonald v. United States, 335 U.S. 451 (1948) 13, 14

New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990) 17, 18, 19

Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 66 L.Ed. 639 (1980) 10, 15

TABLE OF AUTHORITIES – Continued

Page

People v. Day, 165 Ill. App. 3d 266, 116 Ill. Dec. 525, 519 N.E.2d 115, rev. denied 121 Ill. 2d 575 122 Ill. Dec. 441, 526 N.E.2d 834 (1988) 9

People v. Hampton, 164 Cal. App. 3d 27, 209 Cal. Rptr. 905 (1st Dist.), *cert. denied*, 474 U.S. 825 (1985) 8

People v. Klimek, 101 Ill. App. 3d 1, 56 Ill. Dec. 603 427 N.E.2d 598 (1981) 9

People v. Strelow, 96 Mich. App. 182, 292 N.W.2d 517 (1980) 9

Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319 (1920) 15

State v. Blake, 468 N.E.2d 548 (Ind. App. 1984) 8

State v. Bolte, 115 N.J. 579, 560 A.2d 644, *cert. denied*, 493 U.S. 936 (1989) 9

State v. Griffith, 61 Wash. App. 35, 808 P.2d 1171 (1991) 8, 9

State v. Komoto, 40 Wash. App. 200, 697 P.2d 1025, *cert. denied*, 474 U.S. 1021, 106 S.Ct. 572, 88 L.Ed.2d 556 (1985) 9

State v. Penas, 200 Neb. 387, 263 N.W.2d 835 (1978) 8

State v. Storvick, 423 N.W.2d 398 (Minn. Ct. App. 1988) 9

State v. Wren, 115 Idaho 618, 768 P.2d 1351 (Idaho App. 1989) 9

United States v. Bailey, 691 F.2d 1009, 1017 (11th Cir. 1982), *cert. denied*, 461 U.S. 933, 103 S.Ct. 2099, 77 L.Ed.2d 307 (1983) 16, 19

TABLE OF AUTHORITIES – Continued

Page

United States v. Blue, 384 U.S. 251, 86 S.Ct. 1416, 16 L.Ed.2d 510 (1966).....18, 19

United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1976)..... 14

United States v. Crews, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980).....15, 16, 17

United States v. Santana, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976).....6, 7

United States v. United States District Court, 407 U.S. 297, 92 S.Ct. 2125, 32 L.Ed.2d 751 (1972)..... 11

Welsh v. Wisconsin, 466 U.S. 70, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984).....4, 8, 9, 11, 12

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).....15, 16, 19

STATEMENT OF THE CASE

On October 22, 1989, Larry Kenneth Butler, the respondent herein, was arrested inside his home and charged with the offenses of disorderly conduct and refusal to submit to arrest, both misdemeanors. At trial in the Municipal Court of Springdale, Arkansas, respondent was found guilty of refusal to submit to arrest and acquitted of the charge of disorderly conduct. The conviction was appealed to the Circuit Court of Washington County, Arkansas. At trial he was convicted of the offense of refusal to submit to arrest. The sentence was fifteen days in jail, a fine in the amount of $200.00 and court costs in the amount of $62.75.

The case was appealed to the Supreme Court of Arkansas, with the respondent citing three points for reversal: 1.) that the trial court erred in denying his motion to suppress all evidence from the time of the illegal entry into his home; 2.) that the trial court erred in not holding the Arkansas refusal to submit to arrest statute unconstitutional in that it was violative of the Fourth Amendment of the Constitution of the United States; and 3.) that the trial court erred in allowing evidence of testimony from a municipal court trial into a *de novo* circuit court trial and allowed the prosecutor to act as a witness. The Court found the first argument to be persuasive and declined to rule on the other two arguments. The Court held that there were no exigent circumstances justifying warrantless entry into the respondent's home and that all evidence from the time of the illegal entry should be suppressed.

SUMMARY OF ARGUMENTS

Argument I.

Respondent argues that this Court should not grant certiorari because the ruling of the Supreme Court of Arkansas is correct. Respondent argues in essence that the Fourth Amendment as applied through the Fourteenth Amendment requires that exigent circumstances be present to justify a warrantless arrest inside the home and that the Supreme Court of Arkansas found that those circumstances were not present. Respondent further argues that for that reason that this case is inappropriate for deciding whether an officer must have exigent circumstances in addition to hot pursuit to effect a warrantless arrest inside a home. The case is inappropriate because, since the respondent was acquitted of the offense of disorderly conduct, no misdemeanor offense was committed in the officer's presence and the ruling is not clear as to whether there was a finding that there ever was any hot pursuit. If the hot pursuit did in fact exist, it started after the illegal entry into the respondent's home and as such was not an exigent circumstance justifying warrantless entry.

Argument II.

The exclusionary rule requires suppression of evidence in situations where the evidence is gained as a result of exploitation of an illegal act, in this instance the warrantless entry of the police into the respondent's home. The illegal presence of the officer represented a continuing illegality and all evidence gathered during the period of the illegality, the entire time the officer was in

the home illegally, should be suppressed. An additional consideration is the fact that the encounter between the respondent and the officer had effectively ended and the respondent had returned to his house when the officer elected to continue the encounter by entering the respondent's home. This illegal entry constituted the primary illegality which did not conclude until the officer left the house and encompassed all events that occurred during this time as suppressible evidence.

ARGUMENT

I.

THIS COURT SHOULD NOT GRANT CERTIORARI BECAUSE THE FOURTH AMENDMENT (AS APPLIED THROUGH THE FOURTEENTH AMENDMENT) REQUIRES THAT EXIGENT CIRCUMSTANCES BE PRESENT TO JUSTIFY A WARRANTLESS ARREST WITHIN A RESIDENCE. FURTHER THIS CASE IS NOT APPROPRIATE FOR DETERMINATION OF WHETHER THE FOURTH AMENDMENT REQUIRES THAT AN OFFICER HAVE EXIGENT CIRCUMSTANCES IN ADDITION TO BEING IN HOT PURSUIT OF THE DEFENDANT FOR THE ARREST TO BE LAWFUL IN THAT: 1.) NO OFFENSE WAS COMMITTED IN THE OFFICER'S PRESENCE AND 2.) IT IS NOT CLEAR THAT ANY HOT PURSUIT WAS EVER COMMENCED OR WHETHER IF COMMENCED, IT BEGAN IN THE DEFENDANT'S HOME AFTER THE ENTRY OF THE OFFICER.

The Petitioner's request for certiorari is predicated on a complicated set of assumptions. First, that the officer in question was actually in hot pursuit of the respondent.

Second, that said pursuit commenced outside the home of the respondent. Finally, that the Supreme Court of Arkansas found hot pursuit of the respondent existed and that since the Court found the underlying offense to be minor the hot pursuit exigent circumstance exception did not apply under the analysis in *Welsh v. Wisconsin*, 466 U.S. 70, 104 S.Ct. 2901, 80 L.Ed.2d 732 (1984). The facts and ruling in the case are simply not clear and the unique circumstances surrounding this matter weigh against it being useful in determining the circumstance under which an officer may make a warrantless arrest of a defendant in his residence. These disparate facts make the instant case distinguishable from the cases cited by respondent and rather than dispose of old controversies would result in myriad and wholly new difficulties.

A review of the pertinent parts of the Arkansas Supreme Court's ruling illustrates the respondent's basis for argument. As found on page A-1 of the petitioner's brief the Court noted:

> The underlying facts in this novel situation show that on October 22, 1989, Butler called the Springdale Police Department to complain of a disturbance in his neighborhood. Officer Rusty Sudduth responded to the call. Apparently, communication between Butler and Officer Sudduth, on the front porch of Butler's home, deteriorated due to the barking and growling of Butler's dog while there were trying to talk. As a result, Butler asked his wife to call for another officer and reentered his home; Officer Sudduth followed and told him that he was under arrest for disorderly conduct. It is disputed as to when Officer Sudduth told Butler that he was under arrest; Butler claims that Officer Sudduth told

> him after the officer had entered his home, and Officer Sudduth claims that he told Butler while crossing the doorway threshold. It is not disputed that Officer Sudduth did not place Butler under arrest while they were both on Butler's front porch.

The Arkansas Supreme Court stated in its ruling found at page A-7 of petitioner's brief:

> The State contends that the warrantless entry into Butler's home was predicated under the "hot pursuit" exception to the warrant requirement. However, even though Officer Sudduth might have been under the impression that he was in continuous pursuit of Butler for what he considered to be the crime of disorderly conduct, of which Butler was found not guilty, the crime is a minor offense; since the crime is a minor offense, under these circumstances there is no exigent circumstance that would allow Officer Sudduth's warrantless entry into Butler's home for what is concededly, at most, a petty disturbance. There is certainly no exigent circumstance requiring immediate aid or action; consequently, the application of the exigent circumstances exception to the requirement of a warrant for home entry in this context is, therefore, inapplicable, and the police officer's actions were unreasonable behavior that the principles of the Fourth Amendment will not sanction.

The Arkansas Supreme Court never made an explicit ruling on whether or not any "hot pursuit" actually existed. What the Court did say was that even if it did exist, that since the Court determined the offense to be a minor one the exigencies were not such that would justify a

warrantless entry into a residence to effect the arrest. The Court essentially found that no exigencies existed. The "hot pursuit" in the instant case, if it exists, is distinguishable from every case favorably cited by the petitioner, either by the type of pursuit, by the fact that other exigent circumstances were present, or by the underlying offense. It is worthy of note that there actually was no underlying offense in the instant case.

The petitioner cites numerous cases for the proposition that "courts have addressed the issue of whether a warrantless arrest of a defendant inside of a residence for a minor offense may be made on the basis that the officer was in hot pursuit of the defendant." Taking the version of the facts most favorable to the petitioner, the "hot pursuit" began, if at all, with the respondent well within his house and the officer crossing the threshold. No action had been taken before the respondent's reentry into his residence and the officer's subsequent entry. If "hot pursuit" can begin after a warrantless entry into a residence, then the facts alone make it distinguishable from the cases cited.

In *United States v. Santana*, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976), this Court upheld a warrantless entry into the residence of an individual to make a felony arrest. In that instance the defendant retreated into her house after the police approached, identified themselves by displaying their identification and shouting "police." Clearly the individual in question understood that she was being pursued. This Court correctly noted that hot pursuit need not be "an extended hue and cry in and about [the] public streets." And that "a suspect may not defeat an arrest which has been set in motion in a public

place, . . . by the expedient of escaping to a private place." 427 U.S. at 43. In the case at bar, there is no indication that the respondent was fleeing the officer or had reason to think that he might be under any obligation to remain with the officer. Further, respondent was already in a private place, his residence, and the officer was either already inside, or at least in the threshold, when the warrantless arrest was effectuated. The other cases cited by the petitioner are similarly divergent.

The petitioner first cites three cases to support its argument: *In Re Lavoyne M.*, 221 Cal. App. 3d 154, 270 Cal. Rptr. 394 (4th Dist. 1990); *Leopard v. State*, 342 N.E.2d 1347 (Ind.App.1989); *Bennett v. Coffman*, 178 W.Va. 500, 361 S.E.2d 465 (1987); all with facts substantially different from the instant case. *In Re Lavoyne M.*, the hot pursuit was by a police car with lights and siren activated. The defendant stopped in front of his dwelling and entered, ignoring orders of police officers to stop. *Leopard* found that the defendant, followed for several blocks by a police officer, was ordered to halt outside his home and then fled inside. *Bennett* presented the situation where officers had received a disturbance call involving the defendant, had pursued him for several hours, both on the road and around the defendant's house. Additionally that Court found that the exigencies included potential destruction of evidence as well as hot pursuit. *Welsh, supra*, was distinguished in that the state court found that the underlying offense was major, the opposite conclusion reached by the state court in the instant case.

Similarly, *Gasset v. State*, 490 So.2d 97 (Fla.App. 1986) involved a high speed chase through a residential district before the defendant reached and entered his residence. Additionally, that Court found that the underlying

offense was major. The Court in *People v. Hampton*, 164 Cal. App. 3d 27, 209 Cal. Rptr. 905 (1st Dist.) *cert denied*, 474 U.S. 825 (1985) found that under a *Welsh* analysis, the underlying offense was not minor in character and further amplified their understanding of the "hot pursuit" exception to the warrant requirement in that case to apply "where the delay occasioned by obtaining a warrant would permit the escape of one suspected of a grave offense, who remains 'dangerous to life and limb.' "

The petitioner also cited a trio of cases decided before *Welsh* involving divisive facts, *State v. Blake*, 468 N.Ed.2d 548 (Ind.App. 1984); *State v. Neidermeyer*, 48 Or. App. 665, 617 P.2d 911, *cert. denied*, 450 U.S. 1042, 101 S.Ct. 1761, 68 L.Ed.2d 239 (1981); and *State v. Penas*, 200 Neb. 387, 263 N.W.2d 835 (1978). *Blake* involved the high speed pursuit of a motor vehicle prior to arrival at the defendants home. In *Neidermeyer*, the defendant was ordered to stop outside the residence and proceeded inside. Additionally, the officers had received reports that the defendant had been involved in a shooting. *Penas* likewise presented a situation where a defendant was pursued by a police officer who identified himself and ordered the defendant to stop while he was still well outside his residence.

State v. Griffith, 61 Wash. App. 35, 808 P.2d 1171 (1991) and *City of Kirksville v. Guffey*, 740 S.W.2d 227 (Mo.Ct.App. 1987) *cert. denied*, 485 U.S. 1035, 108 S.Ct. 1596, 99 L.Ed.2d 910 (1988), also cited by the respondent, present additional cases where the warrantless entry was found lawful due to exigencies in addition to "hot pursuit." In *Guffey*, the defendant engaged in a high speed car chase with law enforcement officers using siren and lights before he arrived at his residence. The *Guffey* court

further distinguished the case under *Welsh* by finding that the underlying offense was not a minor one. The court in *Griffith* noted the following circumstances: the deputy was following the defendant with flashing lights and siren; defendant was fleeing the deputy; possible destruction of evidence; and defendant was arrested for more than a minor traffic violation. Additionally the court found that the deputy never entered the defendant's house. Another case in this vein is *State v. Komoto*, 40 Wash. App. 200, 697 P.2d 1025, *cert. denied*, 474 U.S. 1021, 106 S.Ct. 572, 88 L.Ed.2d 556 (1985), not cited by the petitioner.

As noted by the petitioner, there have been numerous examples of situations where state courts have refused to find sufficient exigent circumstances based on "hot pursuit" alone. *State v. Wren*, 115 Idaho 618, 768 P.2d 1351 (Idaho App. 1989); *Jeffcoat v. Hinson*, 851 F.2d 346 (4th Cir. 1988); *McCall v. People*, 623 P.2d 397 (Colo. 1981); *People v. Day*, 165 Ill.App.3d 266, 116 Ill.Dec. 525, 519 N.E.2d 115, rev. denied, 121 Ill.2d 575, 112 Ill.Dec. 441, 526 N.Ed.2d 834 (1988); *People v. Klimek*, 101 Ill.App. 3d 1, 56 Ill.Dec. 403, 427 N.Ed.2d 598 (1981); *People v. Strelow*, 96 Mich.App. 182, 292 N.W.2d 517 (1980); *State v. Storvick*, 423 N.W.2d 398 (Minn.Ct.App. 1988); *City of Seattle v. Altschuler*, 53 Wash.App. 317, 766 P.2d 1171 (1991); and *State v. Bolte*, 115 N.J. 579, 560 A.2d 644 (1989).

As noted above, the cases cited as favorable by the petitioner are all distinguishable from the instant case. An equal, if not greater, number of cases agreed with the proposition that "hot pursuit" alone is insufficient to justify a warrantless home arrest. However, all of these cases involve situations where the issue of hot pursuit

was actually ruled upon by the state court. In the instant situation, there was never a clear ruling that any "hot pursuit" actually occurred. The Supreme Court of Arkansas' ruling makes it clear that their finding was that even if "hot pursuit" had occurred that the exigencies involved would have been insufficient to justify the officer's warrantless entry into the respondent's home. This is a very different thing than that asserted by the petitioner. Similarly, the record does not reflect that the respondent retreated into his home "as the officer was attempting to effectuate the arrest." The record presented makes it clear that the respondent was already in his home and the officer was either already inside or within the threshold area of the respondent's home when he tried to effectuate the arrest. As this Court stated in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 66 L.Ed.2d 639 (1980): "[T]he Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton*, at 1381-1382.

The petitioner also makes the argument that even though the officer did not have a situation where destruction of evidence was a likelihood if he did not enter the home and make the arrest, that "he was warranted in doing so to prevent any further threat to or disturbance of public peace." Since the supposed disturbance, of which the respondent was later acquitted, consisted of his disagreement with the officer, it is unclear how the action of the officer in entering the house and continuing the disagreement was to "prevent any further threat to or disturbance of the peace." It would seem that the simplest course in pursuance of that goal would have been to

simply leave and let the respondent call another officer. The respondent had elected to withdraw from this encounter peaceably. The officer chose to continue the encounter by entering the respondent's home. There was no threat to the peace except that presented by continuing the encounter.

Finally, petitioner argues that under the analysis in *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984), that this case should be differentiated in that it involves an offense that provides for significant penalties, including jail time. Petitioner cites numerous cases where other state courts have made decisions under this analysis based on the finding that the crimes involved were not minor. In the instant case, the Supreme Court of Arkansas found that the underlying offense, of which the respondent was acquitted, was a minor offense under Arkansas law. While the *Welsh* case has been criticized, most notably within the Court itself, Justice Rehnquist, now Chief Justice Rehnquist, noted in his dissent in *Welsh* that "[t]he variable factor, if there is one, is the governmental interest that will be served by the warrantless entry." *Welsh*, at 761. It is highly questionable as to what the governmental interest would have been in the instant case.

The Supreme Court of the United States should refuse to grant certiorari in this case for reason that instant case does not properly delineate the issues advanced by the petitioner. There is no clear ruling at the state level whether any "hot pursuit" ever occurred, only that the exigencies present were not sufficient to justify warrantless entry into the home of the respondent to

effect an arrest for a misdemeanor. As such, it is impossible to determine whether the state court ruled that additional exigent circumstances were required, precisely the issue the petitioner wants determined. The holding of the Arkansas Supreme Court should be allowed to stand and certiorari denied.

II.

THIS COURT SHOULD NOT GRANT CERTIORARI BECAUSE THE EXCLUSIONARY RULE REQUIRES THE SUPPRESSION OF EVIDENCE WHICH HAS BEEN OBTAINED BY EXPLOITATION OF THE PRIMARY ILLEGALITY, WHICH OCCURRED AS A RESULT OF THE DECISION OF THE ARRESTING OFFICER TO CONTINUE, IN THE RESPONDENT'S HOME, AN ENCOUNTER FROM WHICH THE RESPONDENT HAD ALREADY PEACEABLY WITHDRAWN.

The petitioner correctly notes that the Supreme Court of Arkansas held that the initial entry of the officer into the respondent's home was unlawful. The theory is then advanced that the appellate court erred in reversing the trial court's denial of respondent's motion to suppress all evidence obtained after the officer entered respondent's home. Petitioner feels that "such a sweeping application of the exclusionary rule is unwarranted." The circumstances of this case dictate otherwise because any evidence gained was as a result of the illegal actions of the officer when he elected to enter the respondent's home.

The facts of the case indicate that after respondent had summoned the police, the respondent and Officer Sudduth became involved in a discussion that was not

proceeding to the satisfaction of either party. Both parties were on the porch of respondent's home and the respondent asked his wife to call another police officer. At that point the respondent peaceably withdrew and reentered his home. There is no evidence to suggest that he was under any duty to remain in the officer's presence. It is axiomatic in our society that when a dispute is about to occur, that we expect the parties to simply walk away. The respondent attempted to peaceably discontinue the encounter with the police officer. He simply went back into his home, the one place in our society that is traditionally free from government interference. It was the police officer who elected to continue the encounter by entering the home of the respondent, without a warrant, to effect an arrest for a misdemeanor for which the evidence was not strong enough to sustain a conviction.

Mr. Justice Jackson's observation in *McDonald v. United States*, 335 U.S. 451 (1948) noting that warrantless home entry should be severely restricted when only a minor offense has been committed seems particularly appropriate to the facts at bar.

> Even if one were to conclude that urgent circumstances might justify a forced entry without a warrant no such emergency is present in this case. This method of law enforcement displays a shocking lack of all sense of proportion. Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat on the gravity of the offense thought to be in progress as well as the hazards of the method attempting to reach it. . . . When an officer undertakes to act as his own magistrate, he ought to be in a position to justify

> it by pointing to some real, immediate and serious consequences if he postponed action to get a warrant.

McDonald, at 450-451.

The facts make it clear that there would have been no discernible consequences if the officer in question had taken the time to get a warrant in the instant case. The failure to do so resulted in the respondent's byzantine journey through the court system to defend his Fourth Amendment rights. The primary purpose of the exclusionary rule is "to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures." *United States v. Calandra*, 414 U.S. 338, 347, 94 S.Ct. 613, 619, 38 L.Ed.2d 561 (1974). *See also Illinois v. Krull*, 480 U.S. 340, 107 S.Ct. 1160, 94 L.Ed.2d 364 (1987). That protection should be paramount in a situation involving the warrantless entry into a private dwelling place. Illegal entry into a person's home is the chief evil guarded against by the Fourth Amendment. *United States v. United States District Court*, 407 U.S. 297, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972). The purpose of this line of reasoning has been well articulated by this Court:

> [A] principal protection against unnecessary intrusions into private dwelling is the warrant requirement of the Fourth Amendment on agents of the government who seek to enter the home for purposes of search or arrest. . . . [Citations omitted] It is not surprising, therefore, that the court has recognized, as "a basic principle of Fourth Amendment law[,]" that searches and seizures inside a home without a warrant are presumptively unreasonable.

Welsh v. Wisconsin, 466 U.S. 70, 104 S.Ct. 2091, 80 L.Ed.2d 732 (1984). Citing *Payton v. New York*, 445 U.S. at 586, 100 S.Ct. at 1380. See also *Coolidge v. New Hampshire*, 403 U.S. 443, 474-475, 92 S.Ct. 2022, 2042-2043, 29 L.Ed.2d 564 (1971).

In *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) this Court defined the scope of the exclusionary rule.

> The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion. It follows from our holding in *Silverman v. United States*, 365 U.S. 505, 81 S.Ct. 679, 5 L.Ed. 734, that the Fourth Amendment may protect against the overhearing of verbal statements as well as against the more traditional seizure of 'papers and effects.' Similarly testimony as to matters observed during an unlawful invasion has been excluded in order to enforce the basic constitutional policies. *McGinnis v. United States*, 1 Cir., 227 F.2d 598. Thus, verbal evidence which derives so immediately from an unlawful entry and an unauthorized arrest as the officer's acting in the present case is no less the "fruit" of official illegality than the more common tangible fruits of the unwarranted intrusion.

Wong Sun, at 485.

Similarly, in *United States v. Crews*, 445 U.S. 467, 100 S.Ct. 1244, 63 L.Ed. 537 (1980), this Court cited Justice Holmes opinion in *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319 (1920), for the proposition that "[t]he exclusionary prohibition extends

as well to the indirect as the direct products of such invasions." This Court further noted that:

> the exclusionary sanction applies to any "fruits" of a constitutional violation – whether such evidence be tangible, physical material actually seized in an illegal search, items observed or words overheard in the course of the unlawful activity, or confessions or statements of the accused obtained during an illegal arrest and detention.

Crews, at 471.

The Supreme Court of Arkansas did not delineate its reasons for holding that all evidence from the time of the officer's illegal entry into the respondent's home should have been suppressed. However, a basis for that reasoning is succinctly stated in the petitioner's brief. The petitioner cites *Wong Sun, supra,* that "evidence is subject to exclusion where it has been obtained by exploitation of the illegality instead of by means sufficiently distinguishable to be purged from the primary taint." All of the evidence sought to be suppressed came directly from the exploitation of the illegal conduct of the police.

In *United States v. Bailey,* 691 F.2d 1009 (11th Cir. 1982) that Court noted several factors to be considered in determining whether the evidence to be suppressed, in that case the defendant's conduct, was a product of illegal police action. Those factors included, "temporal proximity of the arrest and the defendant's response, presence or absence of intervening circumstances, and the purpose and flagrancy of the official conduct." Under this useful analysis it becomes apparent that the respondent's conduct was a direct and foreseeable consequence or product

of the illegal actions of the police. The purpose of the police in entering the house is less than clear in that the encounter between the respondent and the officer had already been peaceably terminated by the respondent. The conduct of the officer was flagrantly violative of the respondent's Fourth Amendment right to be free from an unreasonable invasion of his home by the government. The evidence sought to be suppressed was obtained during the occurrence of the primary illegality, the unwarranted presence of agents of the government. The purpose of the exclusionary rule is to protect the home by requiring exclusion of anything incriminating gathered by the police from the home. *New York v. Harris*, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990).

This is not a case where the "chain of causation proceeding from the unlawful conduct has become so attenuated or has been interrupted by some intervening circumstance so as to remove the 'taint' imposed . . . by the original illegality." *United States v. Crews*, 445 U.S. 463, 472, 100 S.Ct. 1244, 1250, 63 L.Ed. 537. The causal chain is complete, unbroken, and very short. The original illegality was continuing and the evidence sought to be suppressed was part and parcel of the same event. While the petitioner forecasts many dire results if this decision is allowed to stand it becomes clear that the reasoning advanced by the state would allow the invasion of a private home for any reason or no reason at all, seizure of the occupant and the filing of criminal charges should he have the temerity to object, even in a passive manner. By the state's reading he would have no right to suppress this evidence since it would be an "independent act of his own free will." The only redress would be a civil action

against the vastly superior resources of the state that, even if successful, would do nothing to purge the individual of the criminal charge.

The petitioner cites a number of cases to support its position, all of which are distinguishable from the present case in some fashion. Rather than distinguish each case individually, the respondent notes that this Court has recently and forcefully stated its position regarding the suppression of evidence gained in an illegal entry. In *New York v. Harris*, this Court found that:

> Even though we decline to suppress statements made outside the home following a Payton violation, the principal incentive to obey Payton still obtains: **the police know that a warrantless entry will lead to the suppression of any evidence found or statements taken inside the home.** (Emphasis added)

Harris, at 1644.

Thus this Court has explicitly found that the police are charged with the knowledge that an illegal entry into the dwelling place of an individual in violation of the Fourth Amendment will lead to suppression of evidence. The situation in the instant case arose directly from the illegal conduct of the government's agents. The suppression of evidence in this instance does not, as the petitioner asserts, effectively immunize the respondent from prosecution for his allegedly criminal act because it followed a Fourth Amendment violation. This is a misstatement of the result. A more appropriate reasoning is found in *United States v. Blue*, 384 U.S. 251, 86 S.Ct. 1416, 16 L.Ed.2d 510 (1966):

> In some cases, of course, prosecution may be effectively foreclosed by the absence of the challenged evidence. But this contemplated consequence is the product of the exclusion of specific evidence tainted by the Fourth Amendment violation and is not the result of a complete bar to prosecution.

Blue, at 255.

The circumstance in the instant case arose as a result of an illegal and continuing violation of the respondent's Fourth Amendment rights. All the events complained of occurred during this violation. There is not a separate or defining event whereby the violation was concluded and the respondent embarked on a separate course of conduct. All evidence gained during this continuing violation should have been suppressed as the Arkansas Supreme Court so ruled. The very limited circumstances of this case will not result in the situation the respondent alludes to by citing *United States v. Bailey*, 691 F.2d 1009 (11th Cir. 1982) whereby a defendant would be granted "an intolerable carte blanche to commit further criminal acts so long as they are sufficiently connected to the chain of causation started by the police misconduct." *Bailey*, decided before either *Welsh v. Wisconsin, supra* or *New York v. Harris, supra*, involved an illegal stop in an airport, where the separate crimes were flight, and after a pursuit, an assault on an officer. The factual pattern is too disparate to make a suitable comparison with the case at bar.

Similarly, the petitioner's assertion, made in a footnote, that the ruling by the Supreme Court of Arkansas in the instant case effectively nullifies the refusal to submit to arrest law in Arkansas misses the mark. While the

respondent did attempt to have this law declared invalid by the Supreme Court of Arkansas, they declined to rule on that issue. There is no indication that this case extends to any situation other than where the primary illegality is the entry of a home in violation of the Fourth Amendment. This simply would not extend to the majority of arrests under this statute which are doubtlessly not made inside homes.

The decision of the Supreme Court of Arkansas that a motion to suppress all evidence after the illegal entry of the police into the respondent's home should be granted is correct. All the evidence to be suppressed was obtained during, and as a direct result of, a continuing illegal action on the part of the police, and as such, subject to suppression. The decision should be allowed to stand and certiorari should not be granted.

CONCLUSION

The Respondent, Larry Kenneth Butler, for all the reasons stated above, maintains that the decision of the Supreme Court of Arkansas should be allowed to stand, and certiorari should be denied.

Respectfully submitted,

Don Lloyd Cook II
Attorney at Law
21 West Mountain Street
Suite 301
Fayetteville, Arkansas 72701
(501) 682-3650

Counsel for Respondent